



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPP/150878

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance, a hearing was held on September 11, 2013, at Racine, Wisconsin.

The issue for determination is whether the DHCAA correctly seeks to place Petitioner into the Medicaid recipient provider lock-in program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Monica Yeazel, Pharmacist Consultant
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. He does receive Medicaid benefits through the State of Wisconsin.
2. The DHCAA did a review of Petitioner's prescription drug usage during the period of June 11, 2012 to June 6, 2013. It was discovered that Petitioner had obtained prescriptions from 22 prescribers and filled those prescriptions at 7 different pharmacies. Of 214 prescriptions, 64 were

for opioids and 2 for the pain killer tramadol – not a controlled substance but restricted by Medicaid because of a high potential for abuse.

3. By a notice dated July 10, 2013 the Department informed Petitioner that it intended to place him in the Medicaid lock-in program; thus restricting Petitioner to one prescriber restricted medications and to the use of one pharmacy for filling those prescriptions for a 2 year beginning September 1, 2013.
4. Petitioner has had a heart transplant and he has other diagnoses of bipolar disorder, anxiety, major depression, ADD and unspecified mental/behavioral disorders. He has had a diagnosis in his history of acute alcohol intoxication. There is also an indication in his medical records as of May 2013 that he has had some suicidal ideations and suffered poisonings with medicinal substances including sedatives/hypnotics.

DISCUSSION

The Wisconsin Administrative Code, §DHS 104.03(1)(a), provides as follows:

If the department discovers that a recipient is abusing the program, including abuse under s. DHS 104.02(5), the department may require the recipient to designate, in any or all categories of health care provider, a primary health care provider of the recipient's choice, except when free choice is limited under s. DHS 104.035.

The designation of a primary provider is known as the Medicaid lock-in program. Included in the abuses under s. DHS 104.02(5) are (i) "knowingly obtaining health care in excess of established program limitations, or knowingly obtaining health care which is clearly not medically necessary," and (j) "knowingly obtaining duplicate services from more than one provider for the same health care condition." When a person receives prescriptions for addictive drugs from a number of different doctors, and fills them at different pharmacies, the Department becomes suspicious of the person's motives.

It is worthy of note that the law does not permit the recipient to seek the same or similar medical services for more than one provider except for purposes of receiving a second opinion:

DHS 104.02 Recipient duties. (1) NOT TO SEEK DUPLICATION OF SERVICES.

A recipient may not seek the same or similar services from more than one provider, except as provided in s. DHS 104.04.

Wis. Admin. Code, § DHS 104.02(1).

DHS 104.04 details Medicaid payment for a second opinion.

Further, providers are reimbursed for medically necessary and appropriate health services. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;

5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

Petitioner stressed that he has been sober since January 2013. He disputes the May 2013 suicidal ideation assessment. He also stated that needs a variety of providers because of his various diagnoses and that he needs a variety of pharmacies as a single pharmacy does not always have enough medication on hand to fill the prescriptions. He indicated that many of the physicians he sees work in the same clinic and are aware of each other. He objects to being categorized as an abuser of the system.

There is no question that Petitioner has medical issues that cause pain. Nonetheless, he has violated the legally imposed duty upon a recipient to limit themselves to one provider. While it does not appear that Petitioner has been taking medications above therapeutic ranges, his history is a cause for concern. I note that while Petitioner has made a passionate plea on his own behalf he did not present any evidence from his providers indicating that they were aware of other providers and his overall medication usage. In the end, I share the Department's concern for Petitioner's overall health given the pattern and behaviors discussed herein. I cannot find that this pattern is the most appropriate supply or level of service that can safely and effectively be provided to Petitioner. I am concluding that the Department correctly placed Petitioner into lock-in status.

CONCLUSIONS OF LAW

The Department correctly placed Petitioner into the Medicaid recipient lock-in program based on the audit results of Petitioner's prescription usage for the June 11, 2012 to June 6, 2013 period.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

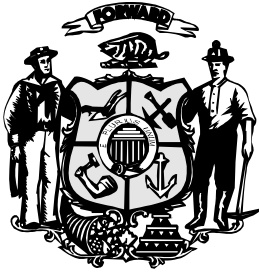
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 1, 2013.

Division of Health Care Access And Accountability